



Opinions

Office of the Vermont Secretary of State

Vol. 13, #9

October 2011

page 1

Transparency Tour coming to a town near you!

page 2

A Flood of Thoughts

page 5

Civics in Action Post-Irene!

page 7

Dates, Times and Places of Transparency Tours

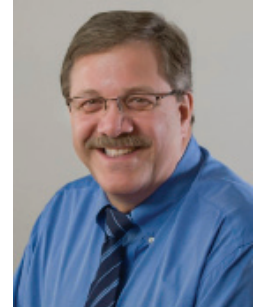
Quote of the Month

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.
- Henry Clay

In this Issue

Quote of the Month	1
Voice From the Vault	2
Opinions of Opinions.....	3
Civics Behind the Scenes	5
Elections Calendar.....	6
Upcoming Events.....	7

A Message from the Secretary



I hope this newsletter finds you well. I know many of you are still reeling from Irene, and will be for some time. VSARA staff has been working with many of you to find the best ways to deal with your damaged records and other records-related issues caused by the flooding. Thank you for your diligence in saving as many records as possible and for your quick thinking and actions that prevented even more devastating results. Most of all, I am, as I am sure you are, proud to live in a state where we have come together to help each other in such difficult times. I am so proud to call Vermont home. We are truly a state filled with neighbors who help neighbors, no matter what struggles arise.

On the topic of records, I am pleased to announce that we have scheduled all 12 of our Transparency Tour meetings. I am eager to get out to your neck of the woods and meet those of you I have not yet met. I hope you are all as excited as I am to discuss the important issues of public record requests and open meetings. **Please refer to page 7 for a list of the dates, times and locations for all 12 of these meetings.**

We hope that you will be able to find a date and location that are convenient for you. The meetings are open to all. I will be presenting information on the new public records law and the current open meeting law—and there will be plenty of time allotted for Q&A. I will be joined by members of the VT School Boards Association, the VT Press Association, the VT League of Cities and Towns, the VT Municipal Town Clerks Association, VT Common Cause, and the VT ACLU, to help answer questions and add to the discussion, which I expect will be rich and helpful for all of us.

Please mark your calendars with the date and place that's most convenient for you and share this information with your colleagues. Understanding these laws is vital to our commitment to transparent and open government in Vermont. Involvement in these events helps us continue to foster a strong relationship between our office and your towns. This is incredibly important to me, so thank you in advance for your participation, especially in light of the fact that many of you are still entrenched in the flood-recovery process and will be for some time to come.

James C. Condos, Secretary of State

Voice from the Vault

by Gregory Sanford, State Archivist

A Flood of Thoughts

In 1931 H.P. Lovecraft published “The Whisperer In Darkness,” his horror story set in the aftermath of Vermont’s 1927 flood. The story’s narrator recounts tales of “bizarre and disturbing objects” found in the surging Winooski, Passumpsic, and West Rivers; tales that eventually lead him to an isolated farmhouse in Townshend.

While Irene did not match the devastation of Vermont’s 1927 flood, it did cut across the state in a similar manner. It too may someday inspire its own tales, but for now recovery, not reflection, must be the priority. It is too soon to truly comprehend the scope of Irene’s impact on Vermont and Vermonters.

Even so, it is possible to make some initial observations on the flood from an archival and records perspective. Certainly Irene reminded us of how dedicated our municipal clerks are. We have heard reports from Waitsfield to Wilmington of clerks moving public records out of harm’s way, even as the waters rose. In a couple of municipalities clerks had damaged records frozen to allow time to evaluate which could or should be saved. In other towns the records were largely unscathed but the municipal building compromised; those clerks are seeking secure off-site storage so they can continue operations while lessening the risk to the records.

State employees deserve equal recognition for their efforts to save public records. The information technology staffs of the agencies of Natural Resources and Human Services removed their agencies’ servers from harm even as the flood waters rose around the state offices in the Waterbury Complex. In at least one case that initiative cost an employee his car. Paper records remained in the lower level and in the flood’s aftermath state employees tried to identify crucial records and salvage them from the mix of mud, water, and contaminants. Their work and concern is appreciated.

In comparison with the work of emergency responders, road crews, and others these stories may seem modest. And yet, Vermont is one of three states in which records affecting title to land are held at the municipal (town) level. If those records were lost it would become more difficult to prove title to your land, which could, in turn, complicate seeking relief funds. Documenting everything from ownership of structures to public rights of way is, to a degree, dependent on these land records.

The responsibilities of Natural Resources, Human Services, and the other Waterbury agencies did not end because of the flood; the need to access everything from existing environmental permits to proving eligibility for state services was exacerbated by the flood. Getting the servers back up and running as quickly as possible was important to everyone affected by the flood and in need of services.

Another group deserves special notice for their efforts to preserve records and Vermont’s cultural resources. MJ Davis of the American Institute of Conservations’ Collections Emergency Response Team; Ann Cousins of the Preservation Trust of Vermont; Jackie Calder of the Vermont Historical Society; and Martha Reid of the Department of Libraries shared communications about flood damage to cultural facilities, including municipal offices, around the state and sent assessment teams to help affected institutions.

While it is too early to assess the disaster response in terms of records, it is possible to make a couple of general observations. Distributed information systems, from off-site microfilm copies of municipal land records to networked servers, are crucial to the protection of records and information and for getting back up and running as soon as possible.

The other observation (surprise) is the importance of good records and information management to both disaster preparedness and response. A simple review of the requirements for an effective agency record management program in 3 V.S.A. §218 underscores that point: <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=03&Chapter=009&Section=00218>

If an agency adopts current and comprehensive record schedules it can better identify and prioritize which records to focus on in a rapidly unfolding disaster like Irene. If records eligible for destruction are destroyed in a timely manner then the staff doesn’t have to wade through intermingled piles of water-logged records to determine what to save. Using our record center for little used departmental records awaiting destruction further reduces the volume of work at a disaster site (conversely, we cannot accept wet or moldy records after a disaster without putting the other records at risk).

On our part we have been communicating with state archivists that have already experienced wide spread disasters, such as the Gulf states hit by Katrina, or that are undergoing similar problems from Irene-related flooding, like New York. We hope to collectively draw from these experiences and the work of our professional associations to improve our disaster mitigation and response tools. We do not want those bizarre and disturbing objects in the surging flood waters to be our most valuable public records.

Opinions of *Opinions*

by Secretary of State Jim Condos

1. It is a best practice for each legislative body, selectboard, school board, or other public body that owns buildings, to adopt a policy outlining its requirements for use of town or school property by other groups. It is constitutionally permissible for a board to prohibit any and all use by outside groups, however, it is not good policy. Allowing use of the buildings by certain categories or types of groups and not other groups may cause discrimination claims, unless there is a real difference in the type of use being requested. For example, it is reasonable and acceptable to limit use of certain rooms or spaces to groups of less than 30, or to meetings ending not later than 9:00 p.m. However, it may be discriminatory to allow the boy scouts to meet in a room, but to turn down a political caucus or a religious organization.

2. Social service agencies can join together in circulating a petition to be signed by 5 percent of the legal voters asking to have an article or several articles placed on the warning for town meeting. However, if using a joint petition, we strongly suggest that each agency present its request in a separate Article in the petition so that the votes for each agency will be taken separately on the ballot or during the floor town meeting.

3. Property tax exemptions for volunteer fire department property must be voted at Town meeting. 32 V.S.A. §3840 *The exemption can be voted for ten years the first time and thereafter for five-year periods. The Vermont Listers Handbook provides a good discussion of property tax exemptions including a chart giving the source of funding for education property tax liability for locally voted exemptions. The handbook also includes a chapter on properties that are exempt under state or federal law, and another chapter on exemptions that must be voted by the town.*



4. The age requirement for State Representative and State Senator are not clear in the Vermont Constitution. In discussions with staff at Legislative Council and the Office of the Attorney General we agree that there is no clear statement of age requirements in either the constitution or the statutes. However, the law is clear in Vermont that if there are any questions about a persons qualifications to serve, it is up to the House of Representatives to judge the qualifications of its members (see 17 V.S.A. §2605), and it is up to the Senate to judge the qualifications of its members. (17 V.S.A. §2606). The consensus of several attorneys familiar with the General Assembly is that if a person is 18 before the beginning of the session, we think that the House or Senate would find that person qualified to serve. If a person was not yet 18 in January when the session begins, it is more likely that the House or Senate might find that person not qualified to serve. However, this is just our best estimation of what the House or Senate might do. **Our office does not have any authority to determine a candidate's qualification to be on a ballot. If petitions and a consent form are properly submitted, the name will be placed on the ballot. It is possible that the House or Senate may adopt Rules or that legislation may be proposed to address the age qualification issue.**

5. The same person can run for the position of Town Clerk and the position of Town Treasurer but each office MUST be listed separately on the March town meeting ballot. There has been some confusion in some towns because the same person has held both offices for many years. Unless a town charter provides otherwise, the person must submit a petition for each office and must be shown on the ballot separately for Town Clerk and Town Treasurer.

6. The term of office for Town Clerk or Town Treasurer is one year unless the town has voted to make it a 3 year term. 17 V.S.A. §2646(2) and (3) *If a town wants to switch back to a one year term, the selectboard can place an article on the annual town meeting to rescind the change to a three-year term and go back to a one year term for either office.*

7. As tax appeals are being held in a number of towns, remember when the listers decision is appealed to the Board of Civil Authority, the BCA may increase, decrease or sustain the appraisal. 32 V.S.A. §4409 *Once the taxpayer raises the issue of the property's valuation, the BCA must make findings to support what the BCA believes to be the correct valuation of the property, even if that amount is higher than the listers' assessment. The same is true for further appeals to the State Board of Appraisers or the Superior Court.*

8. When a zoning administrator has a conflict of interest, or needs a permit for his own property, the planning commission, with the approval of the selectboard can appoint an acting zoning administrator for the limited purpose of handling the matters in which the zoning administrator feels he has a conflict.

9. Municipal financing law was amended as of July 1, 2001 so that a Selectboard can now approve borrowing for purchases of equipment for highway equipment without going back to the voters for approval. 17 V.S.A. §1786(a) (3) and 19 V.S.A. § 304 (a) (3) *This is a very limited delegation of powers and can only be used for equipment to maintain or construct highways or bridges within the town.*

10. Registered voters in Vermont shall not lose residence for voting purposes solely by living outside of the United States. *Until the voter returns to reside in the United States, the voter can remain on the checklist and vote by absentee ballot in the town in which the voter last resided, regardless of his or her reason for living outside of the United States.*

11. However, once a person moves back to the United States, the person must register to vote in the jurisdiction of his or her current residence. *For example, if a member of the armed forces has been stationed in Germany for 20 years and moves back to the United States, that person must register to vote in the place in which he or she now resides. If you send a letter as part of your purging process and the person returns your form giving another town or state within the United States as his or her residence, you can remove that person from your checklist.*

12. A town or city may adopt a conflict of interest prohibition for its elected and appointed officials using the process set out in 24 V.S.A. §1984. *If a town votes to adopt a conflict of interest policy or ordinance it must contain a definition of "conflict of interest", a list of officials covered by the prohibition, a method to determine whether a conflict exists, actions that must be taken if a conflict of interest is found to exist, and a method of enforcement.*

In our monthly Opinions, we provide what we believe the law requires based upon our legal judgment, years of observing Vermont's local government practices, and Vermont Court decisions. This information is intended as a reference guide only and should not replace the advice of legal counsel.

Civics Behind the Scenes

by Olivia Gay, Civic Education and Voter Outreach Coordinator

Civics in Action Post-Irene

The statewide responses to the damage done by Tropical Storm Irene provide many instances of civics put into action. From the tent classrooms in Moretown to the wooded path connecting kids to buses to get to Barstow Elementary School in Chittenden, communities have been making heroic efforts to ensure their schools are open and thereby providing powerful lessons for students to experience civic education firsthand.

Of the people, for the people, by the people. Lincoln's immortal words remind us that a democracy requires a high degree of commitment and responsibility from citizens in word and deed. Children across Vermont have heard words and seen deeds that are profound models for them to follow when the time comes to fulfill their commitments and responsibilities as adults.

Below are a list of "civic dispositions" abridged from The Role of Civic Education on the Center for Civic Education's website: http://www.civiced.org/papers/articles_role.html. These traits are the formal goals of civic education along with knowledge of how our democratic systems work. Underlying all of these traits are the impulses to help and care for each other that Vermonters have demonstrated again and again in the last weeks.

Civic Dispositions contribute to the political efficacy of the individual, the healthy functioning of the political system, a sense of dignity and worth, and the common good...

- **Becoming** an independent member of society...adhering voluntarily to self-imposed standards of behavior... accepting responsibility for the consequences of one's actions and fulfilling the moral and legal obligations of membership in a democratic society.
- **Assuming** the personal, political, and economic responsibilities of a citizen...include taking care of one's self, supporting one's family and caring for, nurturing, and educating one's children. They also include being informed about public issues, voting, paying taxes, serving on juries, performing public service, and serving in leadership positions commensurate with one's talents.
- **Respecting** individual worth and human dignity...listening to others' opinions, behaving in a civil manner, considering the rights and interests of fellow citizens, and adhering to the principle of majority rule but recognizing the right of the minority to dissent.
- **Participating** in civic affairs in a thoughtful and effective manner...becoming informed prior to voting or participating in public debate, engaging in civil and reflective discourse, and assuming leadership when appropriate.
- **Promoting** the healthy functioning of constitutional democracy...encompasses being informed and attentive to public affairs, learning about and deliberating on constitutional values and principles, monitoring the adherence of political leaders and public agencies to those values and principles and taking appropriate action if adherence is lacking. This disposition also inclines the citizen to work through peaceful, legal means to change laws that are thought to be unwise or unjust.

You can explore all of our programs and order materials online at www.sec.state.vt.us/kids/index.html or by calling (802) 828-1296 or (800) 439-8683. If you have any questions, please contact Olivia Gay, Civics Education and Voter Outreach Coordinator, at (802) 828-1296 or Olivia.Gay@sec.state.vt.us.

Elections Calendar

OCTOBER 2011

17 - Last day for U.S. Congressional candidates to file FEC quarterly reports for the October quarter (July 1-Sept. 30). 2 U.S.C. § 434(a)(2)(B) and 17 V.S.A. §2103(13)

DECEMBER 2011

27 - First day to warn the first public hearing if charter adoption, amendment or repeal is to be voted at town meeting (70 days before town meeting). 17 V.S.A. §§ 2641(a), 2645(a)(3) and (6)

UPCOMING MEETINGS AND CONFERENCES

OCTOBER

6th VLCT Town Fair- Vermont League of Cities and Towns Annual Town Fair will be held at Killington Grand Hotel in Killington, VT. You may view the complete Town Fair registration packet and register online at www.vlct.org/eventscalendar/

20th VGFOA Fall Workshop- Vermont Government Financial Officers Association is conducting their annual fall workshop at Stoweflake Resort in Stowe. For more information go to www.vtgfoa.org. Deadline for registration is October 12, 2011.

20th-21st VSBA- The Vermont School Boards Association will hold its 2011 Fall Conference in conjunction with the Vermont Superintendents Association at Lake Morey Resort in Fairlee, VT. Registration will be available soon at www.vtvsba.org/

NOVEMBER

16th-18th NEACTC- New England Association of City and Town Clerks will hold its 44th Annual Conference at the Hilton Mystic in Mystic, Connecticut. Look for more information at www.newenglandclerks.org/



Spread the News!

Do you know of any upcoming events that should be included in *Opinions*? The next issue will come out in early November. Please email or call Nancy Lynch at 828-2148 or nancy.lynch@sec.state.vt.us to submit an event.

Thanks!

Upcoming Events

Transparency Tour Dates, Times and Places!

Tuesday, October 11th, 6-8 pm, Pavilion Building, 109 State Street, Montpelier

Thursday, October 13th, 6-8 pm, McCarthy Arts Center, St. Michael's College, Colchester

Thursday, October 20th, 6-8 pm, Goodrich Library, 202 Main Street, Newport

Tuesday, October 25th, 6-8 pm, St. Albans Town Hall, 579 Lake Road, St. Albans Town

Wednesday, October 26th, 6-8 pm, Springfield High School Cafeteria, 303 South Street, Springfield

Thursday, October 27th, 6-8 pm, Brattleboro Town Hall, Select Board Room (212), 230 Main Street, Brattleboro

Tuesday, November 1st, 6-8 pm, St. Johnsbury Middle School Auditorium, 257 Western Avenue, St. Johnsbury

Thursday, November 3rd, 6-8 pm, Morrisville Municipal Office Community Room, 43 Portland Street, Morrisville

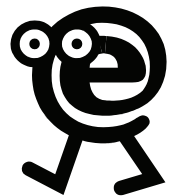
Monday, November 7th, 6-8 pm, Ilsey Public Library, Community Room, 75 Main Street, Middlebury

Wednesday, November 9th, 6-8 pm, Bennington Fire Facility, 130 River Street, Bennington

Thursday, November 17th, 6-8 pm, Rutland City Hall, Alderman's Chamber, 1 Strongs Avenue, Rutland

Tuesday, November 22nd, 6-8 pm, Bugbee Senior Center, 262 North Main Street, White River Junction

Please mark your calendars with the date and place that's most convenient for you and share this information with your colleagues. As was mentioned in the Secretary's message, understanding these laws is vital to our commitment to transparent and open government in Vermont. Involvement in these events helps us continue to foster a strong relationship between our office and your towns. Please join us at one of the above discussions.



LET US KNOW YOU'LL BE THERE!

Please contact Nancy Lynch if you need additional information and to **RSVP**. We want to make sure each venue will accommodate everyone who wishes to attend, so letting us know that you are coming---and to which location, will help us make these events comfortable for everyone! Nancy can be reached at 802.828.2148 or via email at nancy.lynych@sec.state.vt.us. Thanks so much and we hope to see you soon!

Opinions

Office of the Vermont Secretary of State
October 2011

128 State Street
Montpelier, VT 05633-1101
802-828-2363
www.sec.state.vt.us

RETURN SERVICE REQUESTED

Mailing List Updates!

Help us keep our mailing list up to date!

Let us know if:

- your address needs to be updated,
- your name is misspelled, or
- you'd rather receive *Opinions* a week early via email.

Send us a note via fax: 802-828-2496

email: secretary@sec.state.vt.us

or post: 128 State Street, Montpelier, VT 05633-1101.

Be sure to include the information from your current *Opinions* mailing label as well as any changes that you would like to have made.

Thank you for helping us keep Opinions running efficiently!

